

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

M. Scott Brener, Commissioner,
Department of Labor and Industry, State
of Minnesota,

Complainant,

ORDER APPROVING SETTLEMENT

vs.

Sappi Cloquet LLC, d/b/a Sappi Fine
Paper, North America,

Respondent.

On October 12, 2005, a hearing was held at the Office of Administrative Hearings, Minneapolis, Minnesota on the joint motion of Complainant and Respondent for approval of a Settlement Agreement and Order they had executed September 15, 2005.

Julie Leppink, Assistant Attorney General, 443 Minnesota Street, Suite 900, St. Paul, MN 55101-2127, appeared on behalf of Complainant. John W. Polley, Faegre & Benson, LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-3901, appeared on behalf of Respondent. Brian L. Lewis, Industrial Hygienist, PACE International Union, Health & Safety Department, P. O. Box 1475, Nashville, TN 37202, appeared on behalf of the United Steel Workers' International Union (USW), the authorized employee representative that had objected to the Settlement Agreement. Also in attendance were the wife and children of Kerry Roe, the employee who was killed at Respondent's Cloquet, Minnesota, site in the accident that is the subject of the investigation here.

Based upon the foregoing, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT, the Settlement Agreement entered into by Complainant and Respondent on September 15, 2005, is **APPROVED**.

Dated this 24th day of October, 2005

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

The Administrative Law Judge has authority under Minn. Stat. § 182.661, subd. 5, to approve or disapprove a settlement agreement that has been objected to by affected employees or an authorized employee representative. The statute requires the Administrative Law Judge to give consideration to the objection before approving or disapproving the agreement.

On October 5, 2005, the USW filed a formal objection to the proposed settlement. The objection set forth three reasons:

1. The OSHA inspection was well done and the violations were adequately documented. Therefore they should be upheld.
2. The citation and every included item should remain recorded as violations so that any subsequent violations can be treated as repeat or repeat willful violations.
3. The wishes of the victim's family should be considered when a person's life has been prematurely ended.

The Administrative Law Judge has reviewed the original Citation and the Settlement Agreement and Order, and has considered USW's objection. The investigation of this tragic incident resulted in the issuance of a single Citation to Respondent. The Citation contained four Items. One of the Items contained three Subitems of similar types of violations and another contained two Subitems of similar types of violations. A penalty of \$25,000 was proposed for Item 1 with its Subitems, a penalty of \$3,500 was proposed for Item 2, a penalty of \$3,500 was proposed for Item 3 with its Subitems, and a penalty of \$25,000 was proposed for Item 4. The total penalty proposed was \$57,000.

In the Settlement Agreement, the Citation and Notification of Penalty is revised to delete Subitems 1a and b, but Subitem 1c remains as a serious violation with a penalty of \$25,000. Items 2 and 3, with its Subitems 3a and 3b, are rescinded, as are the penalties of \$3,500 each originally proposed for those two items. Item 4 was amended to more specifically refer to the lack of machine guarding on the day of the incident in which Mr. Roe was killed, but the item remains a serious violation with a penalty of \$25,000. Thus, under the Settlement Agreement, Respondent will pay total penalties of \$50,000.

The Settlement Agreement also states that while Respondent does not admit liability for any purpose, nothing shall prohibit Complainant, an Administrative Law Judge, or a court from considering the Settlement Agreement as evidence in any future proceeding under the Minnesota Occupational Safety and Health Act.

The Settlement Agreement is reasonable. It imposes a very substantial penalty upon Respondent. It resolves this matter without the cost of and uncertainty of further litigation. While Respondent does not admit liability in the Settlement Agreement, it

does withdraw its Notice of Contest to the Amended Citation and Notice of Penalty and the Settlement Agreement may be used in any future Minnesota OSHA proceedings.

Turning to the USW's objections, the more serious violations related to the failure of Respondent to properly guard the machinery at the time of Mr. Roe's death have been upheld. The violations related Respondent's safety programs have been rescinded. While that is of some concern for the future protection of Respondent's employees, these violations are less clear and more difficult to prove. It is not unreasonable that they be rescinded as part of a settlement. The Respondent will have a record of violations that can be used at least in Minnesota in assessing penalties for any similar violations in the future. Lastly, the Complainant has considered the impact of Mr. Roe's death upon the family and they can take some satisfaction from the Settlement Agreement. It results in a very significant penalty to Respondent for the serious violations that occurred on November 11, 2003. Overall, the investigation, Citation, and subsequent cooperation of Respondent in reaching a reasonable settlement should help improve the safety of Respondent's employees in the future.

S.M.M.